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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 71-1721

CHRYSLER CORPORATION,
Petitioner,

VERSUS

OPAL I. VAUGHN, Guardian of the Person and Estate of Johnnie B. Vaughn and MID-CONTINENT CASUALTY COMPANY,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS TENTH CIRCUIT

ELLIOTT C. FENTON and
WM. G. SMITH, of
FENTON, FENTON, SMITH, RENEAU & MOON
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Oklahoma City, Oklahoma 73102
Counsel for Petitioner

July, 1971

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. 235-0030

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In the
Supreme Court of the United States

OCTOBER TERM, 1970

No. ——

CHRYSLER CORPORATION,
Petitioner,

VERSUS

OPAL I. VAUGHN, Guardian of the Person and Estate of Johnnie B. Vaughn and MID-CONTINENT CASUALTY COMPANY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS TENTH CIRCUIT

Petitioner, Chrysler Corporation, a corporation, prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered on April 14, 1971, affirming the trial court's judgment in favor of the respondents and against this petitioner. Petition for Rehearing was timely filed. A motion to Stay the Mandate has been granted to August 5, 1971.

OPINIONS BELOW

The opinion of the United States Court of Appeals, Tenth Circuit, is not yet officially reported and is appended to this petition in Appendix B at pp. iii-viii. It affirmed a

judgment in the District Court for the Western District of Oklahoma. There is no opinion of that Court. The judgment is printed in Appendix A at pp. i-ii.

JURISDICTION

The judgment of the United States Court of Appeals was entered on April 14, 1971, and Petition for Rehearing was timely filed and thereafter denied on June 21, 1971. The Court of Appeals entered further order on July 2, 1971, extending Stay of Mandate to and including August 5, 1971, within which to petition for certiorari. Jurisdiction of this Court is invoked under Title 28, U.S.C., Section 1254 (1). Jurisdiction of the District Court was invoked by the Respondents based on diversity of citizenship of the parties.

QUESTIONS PRESENTED

1. Whether the opinion of the Court of Appeals in a case governed by Oklahoma Laws, violated the *Erie Ry. Co.* v. *Tompkins* Doctrine in admittedly going "much further than just reiterating existing law" of the State of Oklahoma.

2. Whether the opinion of the Court of Appeals is in conflict with decision of other Circuits on the same issues and is in conflict with its own prior decisions.

STATUTES, FEDERAL RULES

None are directly applicable herein.

STATEMENT OF THE CASE

This diversity suit arose out of a claim for personal injuries resulting from a truck accident in 1967. Chrysler Corporation, as the original manufacturer and assembler of the 1966 Dodge Truck was the only defendant in the action. The plaintiff Vaughn claimed the accident was caused by a loose clamp in the steering assembly of the truck (which had been driven 18,993 miles before the accident). At the trial it was found by the court and stipulated by the parties that the steering assembly and clamp had been completely changed and modified by an independent retail truck dealer (not a party to the action) to create a different truck with a larger load capacity. It was also found that this change and modification was made without the knowledge or direction of Chrysler. The question of *"agency"* or *"respondeat superior"* was not involved.

In order to affirm the judgment in the District Court, the Court of Appeals admitted in its opinion it had to go "much further than . . . existing law."

The opinion of the Court of Appeals created new law contrary to the existing law of Oklahoma (and elsewhere) and created absolute liability without fault on the part of a manufacturer for unknown changes in a product made by subsequent owners without the knowledge, authorization, or direction of the manufacturer. The effect of the opinion is to make a manufacturer liable merely because its label or its name is on a product.

REASON FOR GRANTING THE WRIT

The decision below should be reviewed because of the following substantial important questions:

1. The opinion of the Court of Appeals is in obvious violation of the doctrine established by this Supreme Court in the case of *Erie Ry. Co.* v. *Tompkins*, 304 U.S. 64, 82 L.Ed. 1188, 58 S.Ct. 817, 822, requiring, in a diversity action, the law to be applied "is the law of the state." The present opinion states ". . . we recognize our decision goes much further than just reiterating existing law . . . ."

In this action, no Federal Constitutional question or Act of Congress is involved. The accident occurred in Oklahoma, the plaintiff was an Oklahoma resident, and the sale of the subject truck was made in Oklahoma by an Oklahoma Company to the Oklahoma employer of the plaintiff. The law of Oklahoma should be applied to this action as it existed and not as the Court of Appeals deems the law might, or should, some day be in Oklahoma.

In *Marathon Battery Co.* v. *Kilpatrick*, 418 P.2d 900 (Okla. 1965), the Supreme Court of Oklahoma basically adopted the so-called Doctrine of Strict Liability in Tort (breach of implied warranty of fitness of a product) where injuries are alleged to have resulted from the use of a product. This principle was followed by other cases including *Barnhart* v. *Freeman Equipment Co.*, 441 P.2d 993 (Okla. 1968). The principles and requirements involved in such actions are set forth in Restatement of Torts, 2nd, Section 402A. These precedents all require proof that the subject product was defective when it left the hands and control of the named defendant or defendants. In the case at bar, the

only defendant was Chrysler. It was stipulated in the trial court, and recognized in the decision of the Court of Appeals, that no defect existed in this subject truck when it left the hands and control of Chrysler.

The Court of Appeals, in admittedly creating new law, overlooked leading Oklahoma cases which were controlling in this case, if the *Erie* Doctrine is to be followed.

1. A manufacturer-distributor is not responsible for the acts of its authorized dealers. *Coe* v. *Esau*, 377 P.2d 815 (Okla. 1963); *Cities Service Oil Co.* v. *Kindt*, 200 Okla. 64, 190 P.2d 1007 (1947).

2. The burden is upon the plaintiff to prove the product which is alleged to have caused an injury was in the same condition as *when it left the defendant's hands. Michel* v. *Branham*, 327 P.2d 440 (Okla. 1958); *Carter Oil Co.* v. *Independent Torpedo Co.*, 107 Okla. 209, 232 Pac. 419 (1924); *Ayers* v. *Amatucci*, 206 Okla. 366, 243 P.2d 716 (1952).

3. A parent corporation is not responsible for the acts of its wholly owned subsidiary (absent fraud, sham and other factors which are not involved here). *Gulf Oil Corporation* v. *State*, 360 P.2d 933 (Okla. 1961); *Sautbine* v. *Keller*, 423 P.2d 447 (Okla. 1966); *Wallace* v. *Tulsa Yellow Cab Taxi and Baggage Co.*, 178 Okla. 15, 61 P.2d 645 (1936).

The law of Oklahoma was clear as to the non-liabiilty of Chrysler under the stipulated facts as to the material change in the product after it left the hands of Chrysler. The District Court of Appeals should have followed the existing Oklahoma law. It should not attempt to create new law for Oklahoma.

2. This decision of the Court of Appeals, if allowed to stand, creates a conflict between decisions of the various Circuit Courts as to whether the Federal Courts should create new law and speculate as to the possible future law of a State or, whether it must follow the existing law of the State.

Following the *Erie Railroad* Doctrine, the Courts of Appeal have uniformly held that the Federal Courts are bound by applicable state law "as we divine it today, not what it might be tomorrow." *Ford Motor Co.* v. *Mathis,* 322 F.2d 267 (5th Cir. 1963); *MacLean* v. *Parkwood Inc.,* 354 F.2d 770 (1st Cir. 1966), and many others.

The Fifth Circuit Court in *Helene Curtis Industries, Inc.* v. *Pruitt,* 385 F.2d 841 (5th Cir. 1967), *cert. den.* 391 U.S. 913, 88 S.Ct. 1806, 20 L.Ed.2d 652 (1968), applying the existing Oklahoma law in a products liability case, held (at p. 853) the "plaintiff must prove that the product has not been substantially altered after leaving the maker's control." The Oklahoma law is the same now as when it was followed by the Court of Appeals, Fifth Circuit, in the *Helene Curtis Industries* case (1967).

In a most similar factual case, this same principle was followed in *Ford Motor Company* v. *McDavid,* 259 F.2d 261, *cert. den.* 358 U.S. 908, 79 S.Ct. 234, 3 L.Ed.2d 229 (4th Cir. 1958).

Before the present opinion, the Tenth Circuit Court had recognized this same principle in the case of *Criqui* v. *Blaw-Knox Corporation,* 318 F.2d 811 (10th Cir. 1963), at page 814:

> ". . .. we do not believe that this court should lay down a new rule of substantive law in Kansas allow-

ing recovery in the type of action involved here, and, thus, open up a 'new field of litigation' in that state. We, of course, recognize that the modern trend does appear to favor the appellant's position and that the Supreme Court of Kansas, in the absence of statutory prohibitions, may some day lay down such a rule. Nevertheless, that decision should come in the first instance from the Kansas Court and not from this Court."

3. At the beginning of the trial the District Court properly advised the jury as to the Oklahoma law, stating in the *voir dire*:

". . . However, the manufacturer is not deemed to be the absolute guarantor of the safety of all its equipment, and *the manufacturer would not be liable . . . if some intervening company caused the defects after it left the manufacturer's hands . . . .*"

The trial court further said:

"THE COURT: The law requires that a plaintiff prove his case by a preponderance of the evidence, that is in this particular case, Mr. Vaughn must prove, before he can recover, that this steering mechanism was defective, that the defects were caused by the defendant Chrysler Corporation or brought about by that company and that his injuries proximately resulted from the defects. Now, he must prove those things before he's entitled to recover. All of you believe that's good law?

"If he fails to prove those things, then you must return a verdict in favor of the defendant, even though you find that he was injured, it still must be shown that the injuries were caused, in other words, by the defendant . . . ."

Yet, *after* the defendant's evidence was in and the court had found (and the plaintiff had stipulated) there had been a material change of the steering assembly by the corporate dealer, which was unknown to defendant Chrysler, the *court changed* his original statement to the jury as to the law of Oklahoma and instructed that Chrysler was responsible despite the unknown changes made, for its own purpose and benefit, by Dodge Trucks Inc., the separate independent dealer.

There was no change (by decision or statute) in the Oklahoma law between the commencement of trial and the instructions to the jury on the third day of trial.

This creation of new law for Oklahoma by both the District Court and the Court of Appeals is strictly contrary to and in disregard of the *Erie* Doctrine.

CONCLUSION

For the reasons set forth above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ELLIOTT C. FENTON and
WM. G. SMITH, of
FENTON, FENTON, SMITH, RENEAU & MOON
405 Investors Capital Building
Oklahoma City, Oklahoma 73102
Counsel for Petitioner

July, 1971

APPENDIX A

FILED
Sep. 15, 1969
VERA L. HOWARD
Clerk, U. S. District Court
By GLADYS M. JONES
Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

OPAL I. VAUGHN, GUARDIAN OF THE PERSON AND ESTATE OF JOHNNIE B. VAUGHN, Plaintiff,	)	
MID-CONTINENT CASUALTY COMPANY, Intervening Plaintiff,	)	No. 68-362 Civil
—vs—	)	
CHRYSLER CORPORATION, a corporation, Defendant.	)	

JUDGMENT

On September 8, 1969, captioned case came on for jury trial. All parties appeared in person and by their attorneys of record. A jury was duly empaneled. After all parties had presented evidence, the case was presented to the jury, which returned a verdict stating,

> "We the jury find in favor of the plaintiff Opal I. Vaughn, Guardian of the person and Estate of Johnnie B. Vaughn, and against the defendant Chrysler Corporation, a corporation, and fix the amount of her recovery at $50,000.00.
>
> "We further find in favor of the intervening plaintiff Mid-Continent Casualty Company, and fix the amount of its recovery at $1,942.12 for cost of repairing the truck."

[APPENDIX]

Judgment is hereby entered in favor of plaintiff for $50,000.00 and the costs of this action.

Judgment is hereby entered in favor of intervening plaintiff for $1,942.12 and the costs of this action.

Judgment entered September 15, 1969.

/s/ LUTHER B. EUBANKS
LUTHER B. EUBANKS
UNITED STATES DISTRICT JUDGE

/s/ WM. G. SMITH
WM. G. SMITH
Attorney for Defendant

JUDGMENT ENTERED IN CIVIL DOCKET OF ADELAIDE HOLSTON, DEPUTY, SEP. 15, 1969

APPROVED:

/s/ GUS RINEHART
GUS RINEHART, Attorney for Plaintiff

/s/ MICKEY JAMES
MICKEY JAMES, Attorney for Intervening Plaintiff

ATTEST: A true copy of the original.
Vera L. Howard, Clerk

By Gladys M. Jones
Deputy

APPENDIX B

FILED
United States Court of Appeals
Tenth Circuit
Apr. 14, 1971
HOWARD K. PHILLIPS
Clerk

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

March 1971 Term

OPAL I. VAUGHN, Guardian of the Person and Estate of Johnnie E. Vaughn, Plaintiff-Appellee,	)	
MID-CONTINENT CASUALTY COMPANY, Intervening Plaintiff-Appellee,	)	No. 663-69
v.	)	
CHRYSLER CORPORATION, a corporation, Defendant-Appellant.	)	

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

William G. Smith (Leroy J. Patton of Fenton, Fenton, Smith, Reneau & Moon, on the brief) for Defendant-Appellant.

Mickey James of Green & James for Mid-Continent Casualty Company, and Michael C. Stewart of Rinehart,

[APPENDIX]

Cooper & Stewart for Opal I. Vaughn (Gus Rinehart on the brief) Plaintiffs-Appellees.

Before LEWIS, Chief Judge, HICKEY* and HOLLOWAY, Circuit Judges.

LEWIS,** Chief Judge.

This is a product liability case in which Chrysler Corporation, the sole defendant, appeals from an adverse judgment for damages entered in favor of plaintiff-appellee for personal injuries suffered by her ward and husband in a one-car automobile accident. The evidentiary facts upon which liability was premised in the action are not now in dispute and present a clear-cut question of law dispositive of the appeal.

The subject product was a Dodge truck manufactured by Chrysler Corporation. This corporation sold the truck to Chrysler Motors, a wholly-owned corporate subsidiary. Chrysler Motors then sold the truck to its wholly-owned subsidiary, Dodge Trucks, Inc. Dodge Trucks is a retail truck dealer. This company sold the truck to another dealer, Clark Motor Company of Oklahoma City, and Clark sold the truck to the ultimate consumer leading to its use by the injured Vaughn.

While the truck was in the possession of Dodge Trucks the front axle was converted from a 5,000- to 7,000-pound axle and the steering assembly accommodated to the axle change. In making this change the holding clamp in the steering assembly was not securely clamped and the resultant unresponsive steering wheel caused the accident to occur. And in summation of the dispositive facts we consider the following to be pertinent:

---

* Judge Hickey, since deceased, heard the arguments in this case but did not participate in this decision.

** By reassignment.

1. The consumer bought from an authorized Chrysler dealer a new truck ordered to specification.

2. The dealer did not have the truck in stock and obtained the vehicle from another dealer, Dodge Trucks.

3. The truck was not defective in manufacture.

4. The truck became defective when altered by Dodge Trucks.

5. The defect caused the accident resulting in injury and damage to Vaughn.

6. Dodge Trucks is a wholly-owned subsidiary, once removed, of Chrysler Corporation, the original manufacturer.

7. The separate corporate organizations of Dodge Trucks and its parent Chrysler Motors are in no way sham. Each of these companies is adequately financed and performs a legitimate and independent function within the total corporate structure of Chrysler Corporation resulting in tax and organizational benefits to Chrysler Corporation.

8. The mechanical work done on the subject truck was not specifically known to, authorized by, and/or delegated by custom to Dodge Trucks as an incident of manufacture by Chrysler Corporation.

Against this factual background the trial court instructed the jury, in pertinent part as follows:

> Evidence has been permitted to come before you in this case tending to show that the separate corporation, Dodge Trucks, Inc., made alterations on the Dodge truck in question by changing the factory installed front axle, from 5,000 pound type to 7,000 pound type, and during opening statements by the Court and counsel you were told that the defendant, Chrysler Corporation, as one of its defenses claimed that this alteration and modification of the truck by the separate

legal entity Dodge Trucks, Inc., would exonerate and absolve the defendant Chrysler Corporation of liability herein. I instruct you, however, that as a matter of law and under the facts in this case the modifications made by Dodge Trucks, Inc., would not relieve Chrysler Corporation of liability in this case if you find that the said truck had a defective steering mechanism when it was delivered by the Clark Motor Company to Mr. Welborn. This is so because the truck was purchased by Welborn as a new vehicle and under the law of the State of Oklahoma a manufacture is liable in tort when an article it places on the market proves to have a defect that causes injury to a human being and said manufacturer cannot escape such liability by tracing the defect to one of its wholly owned subsidiaries provided the said defects are caused prior to the time that said article is placed on the market for sale through an authorized dealer as a new vehicle.

Once again we are faced with the necessity of trying to anticipate how a state court, here Oklahoma, would solve a completely novel legal issue when that court has had no opportunity to give the problem any consideration. We are, of course, entitled to lean on the judgment of the trial judge as knowledgeable and persuasive in the determination of the law and affairs of his resident state. Nevin v. Hoffman, 10 Cir., 431 F2 43, 46; Brunswick Corp. v. J. & P. Inc., 10 Cir., 424 F2 100, 104; Denning v. Bolin Oil Co., 10 Cir., 422 F2 55, 58. And since the judgment of the trial judge seems to reflect a desirable trend in the rapidly progressive field of product liability, we affirm.

We start with the premise that the undisputed facts in this case show liability to exist within the over-all corporate structure of the parent corporate manufacturer, Chrysler Corporation. No true stranger to the financial or marketing structure of the manufacturer has here intervened to destroy the quality of manufacture. The imposed

liability on Chrysler Corporation is thus not that of an insurer but strict to the extent that the reliance of a consumer on the integrity of the manufacturer is not defeated by a complicated corporate structure in which the consumer has no interest nor knowledge that his confidence in the product has been legally thwarted through the mysteries of business technicalities and complications completely foreign to him. The hard factual core of this case lies in the transaction itself: the purchase and sale of a new Dodge truck, defective on delivery. We can see no real reason why the liability of the primary manufacturer should be defeated by an integrated corporate financial structure established and totally controlled by the primary manufacturer. The very nature of this transaction, repeated as it is daily many times throughout the nation, should remain as a desirable and perhaps even necessary fortress allowing, absent extraneous factors, recovery if consumer protection is to be meaningful in the law.

Although we recognize that our decision goes much further than just reiterating existing law we are not without some comfort in principles established in the courts of Oklahoma and elsewhere. The doctrine of strict liability in tort in consumer product cases is firmly established in Oklahoma. Barnhart v. Freeman Equipment Co., 441 P2 993. *And see* "Oklahoma's Emergence from Antiquity, Acceptance of the Doctrine of Strict Liability in Tort," 6 Tulsa L.J. 61, wherein the writer in analyzing the cited and earlier Oklahoma cases indicates the involvement of an applicable doctrine in Oklahoma of imposing strict liability in consumer product cases wherever the social pressures indicate need as a matter of public policy. The case at bar would seem to be such a case in practical application.

The fact that the subject truck was not defective in original manufacture is no defense. Vandermark v. Ford Motor Co. (Cal.) 391 P2 168. Although the defect in *Vandermark* was occasioned by the acts of an authorized dealer

and imposes liability upon the manufacturer through delegation of authority still the case emphasizes the need for consumer protection although the product passes through numerous steps in commerce between the manufacturer and consumer. And perhaps the ultimate in consumer protection was established by the Third Circuit in Gizzi v. Giaccio, — F2 —, decided Jan. 20, 1971, where a divided court held open the possibility of liability of a manufacturer for a defective service or product not its own but perhaps marketed under its apparent authority.

AFFIRMED.

APPENDIX C

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
Office of the Clerk
Denver, Colorado 80202

June 21, 1971

Howard K. Phillips
Clerk

Telephone
303-837-3157

Re: No. 663-69, Opal I. Vaughan, etc. vs. Chrysler Corp., et al. etc.

Mr. William G. Smith
Attorney at Law
405 Investors Capital Bldg.
Oklahoma City, Oklahoma 73102

Dear Mr. Smith:

Orders have been entered today in the above-captioned case denying the petition for rehearing and the suggestion for rehearing en banc.

Yours very truly,

/s/ HOWARD K. PHILLIPS, Clerk
By Helen R. Bartha
Helen R. Bartha
Deputy Clerk.

hkp:hb

CC: Mr. Frank Seay, P. O. Box 1426, Seminole, Oklahoma 74868;

Mr. Mickey James, 710 Leonhardt Bldg., Oklahoma City, Oklahoma;

Mr. Michael C. Stewart, 325 Robert S. Kerr Avenue, Oklahoma City, Oklahoma 73102

—x—

APPENDIX D

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
Office of the Clerk
Denver, Colorado 80202

July 2, 1971

Howard K. Phillips
Clerk

Telephone
303-837-3157

Re: No. 663-69, Vaughn, et al. vs.
Chrysler Corp.

Mr. W. G. Smith
Attorney at Law
405 Investors Capital Bldg.
Oklahoma City, Oklahoma 73102

Dear Mr. Smith:

An order has been entered today, extending the stay of mandate to and including August 5, 1971, pending certiorari.

Yours very truly,

/s/ HOWARD K. PHILLIPS, Clerk
By Helen R. Bartha
Helen R. Bartha
Deputy Clerk.

hkp:hb

CC: Frank Seay, Esq., P.O. Box 1426, Seminole, Oklahoma 74868;

Mickey James, Esq., 710 Leonhardt Bldg., Oklahoma City, Okla.

Michael C. Stewart, Esq., Law Title Bldg., 325 Robert S. Kerr Ave., Oklahoma City, Oklahoma 73102;